

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS OF CALIFORNIA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 20-606 C
)	(Judge Wolski)
THE UNITED STATES,)	
)	
Defendant.)	
)	

STIPULATION TO ENTER PARTIAL FINAL JUDGMENT

To partially resolve the Complaint of Plaintiffs, and to permit the entry of partial final judgment on that Complaint, Plaintiffs and the United States (collectively, the “Parties”) stipulate as follows:

1. Section 1402 of the Patient Protection and Affordable Care Act (ACA) established the cost-sharing reduction (CSR) program to lower the cost of health coverage offered for eligible insureds. 42 U.S.C. § 18071.
2. On August 14, 2020, the U.S. Court of Appeals for the Federal Circuit determined that “the government violated its obligation to make cost-sharing reduction payments [to insurers] under section 1402; ‘that the cost-sharing-reduction reimbursement provision imposes an unambiguous obligation on the government to pay money[;] and that the obligation is enforceable through a damages action in the [Claims Court] under the Tucker Act.’” *Cnty. Health Choice, Inc. v. United States*, 970 F.3d 1364, 1371 (Fed. Cir. 2020) (quoting *Sanford Health Plan v. United States*, 969 F.3d 1370, 1373 (Fed. Cir. 2020)). The Federal Circuit further determined that there was “no basis for a 2017 damages offset.” *Id.* at 1372. The Supreme Court denied further review of these rulings.

3. On May 15, 2020, Plaintiffs filed the Complaint in this Court (ECF No. 1) seeking damages for unpaid CSR payments through the date judgment is entered against the United States. The Complaint asserts two counts, each seeking the same CSR payments through the date judgment is entered against the United States.

4. The Parties agree that the Federal Circuit's rulings in *Community Health Choice* and *Sanford* entitle Plaintiffs to payment under section 1402 of the ACA in the amount of \$31,997,702.12 (the Stipulated Amount) for unpaid CSR payments through December 31, 2017.

5. Accordingly, the Parties jointly request that the Court enter partial final judgment in favor of Plaintiffs in the amount of \$31,997,702.12 on Count I of the Complaint as it relates to CSR payments the Government owes Plaintiffs through December 31, 2017, with each party to bear its own costs, attorney fees, and expenses.

6. The Parties further request that the Court partially dismiss Counts I and II of the Complaint as they relate to Plaintiffs' claim for CSR payments through December 31, 2017 only, with prejudice. Plaintiffs' CSR claims for benefit years 2018 and beyond shall not be dismissed.

7. Upon entry of partial final judgment in the Stipulated Amount, Plaintiffs Blue Cross of California (HIOS no. 27603); HMO Colorado, Inc., dba HMO Nevada, including its plans in Colorado (HIOS no. 76680) and Nevada (HIOS no. 60156); Rocky Mountain Hospital and Medical Service, Inc., dba Anthem Blue Cross and Blue Shield, including its plans in Colorado (HIOS no. 87269) and Nevada (HIOS no. 33670); Anthem Health Plans, Inc. (HIOS no. 86545); Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. (HIOS no. 49046); Anthem Insurance Companies, Inc. (HIOS no. 17575); Anthem Health Plans of KY, Inc. (HIOS no. 36239); Anthem Health Plans of ME (HIOS no. 48396); Healthy Alliance Life Company (HIOS no. 32753); Matthew Thornton Health Plan, Inc. (HIOS no. 96751); Empire HealthChoice HMO,

Inc. (HIOS no. 80519); Community Insurance Company (HIOS no. 29276); HealthKeepers, Inc. (HIOS no. 88380); and Compcare Health Services Insurance Company (HIOS no. 79475), and any and all of its affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, relating to unpaid CSR payments owed to Plaintiffs by the Government through December 31, 2017.

Dated: January __, 2022

/s/ Lawrence S. Sher

Lawrence S. Sher (D.C. Bar No. 430469)
REED SMITH LLP
1301 K Street NW
Suite 1000-East Tower
Washington, DC 20005
Telephone: 202.414.9200
Facsimile: 202.414.9299
Email: lsher@reedsmith.com

Of Counsel:

Gregory Vose (PA Bar No. 324912)
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
Telephone: 412.288.3131
Facsimile: 412.288.3063
Email: gvose@reedsmith.com

Attorneys for Plaintiffs

Respectfully submitted,

BRYAN M. BOYNTON
Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY.
Director

/s/ Claudia Burke

CLAUDIA BURKE
Assistant Director

/s/ David M. Kerr

DAVID M. KERR
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 307-3390

Email: David.M.Kerr@usdoj.gov

OF COUNSEL:

ALBERT S. IAROSI
Trial Attorney
Civil Division
U.S. Department of Justice

Attorneys for Defendant